

**701—115.8(421,441) Hearings before the board.**

**115.8(1) *Prehearing conference.*** An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

**115.8(2) *Notice of hearing.*** Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. Unless subject to a hearing scheduling and discovery plan, if a hearing is requested the board shall serve a notice of hearing to the parties at least 30 days prior to the hearing. The parties may jointly waive the 30-day notice by following the provisions of subrule 115.8(3). The notice of hearing shall contain the following information:

- a. A statement of the date, time, and place of the hearing;
- b. A statement of legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. That the parties may appear and present oral arguments;
- e. That the parties may submit evidence and briefs;
- f. That the hearing will be electronically recorded by the board;
- g. That a party may obtain a certified court reporter for the hearing at the party's own expense;
- h. That audiovisual aids and equipment are to be provided by the party intending to use them;
- i. A statement that, upon submission of the appeal, the board will take the matter under advisement. An order will be issued to the parties; and
- j. A compliance notice required by the Americans with Disabilities Act (ADA).

**115.8(3) *Waiver of 30-day notice.*** The parties to the appeal may jointly waive the 30-day written notice requirement for a hearing in Iowa Code section 441.37A by submitting a mutually agreed upon hearing date approved by the board.

**115.8(4) *Continuance.*** Any hearing may be continued for "good cause." "Good cause" is equated to any cause not growing out of the fault or negligence of the movant, which satisfies the board that substantial justice will more nearly be obtained if the case is continued. A motion to continue the hearing shall be in writing and, except in exigent or other unusual circumstances, filed not later than 7 days before the hearing or immediately upon "the cause" becoming known. The motion must contain sufficient specific information or be supported by sufficient evidentiary materials or both to allow the board to determine whether there is "good cause" and whether the alleged cause grows out of the fault or negligence of the moving party. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors, including the existence of a hearing scheduling and discovery plan.

**115.8(5) *Telephone and video proceedings.*** The board or presiding officer may conduct a telephone or video conference in which all parties have an opportunity to participate to resolve preliminary procedural motions. Other proceedings, including contested case hearings, may be held by telephone or video. The board will determine the location of the parties and witnesses for telephone and video hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

**115.8(6) *Hearing procedures.*** A party to the appeal may request a hearing, or the appeal may proceed as a written consideration. The local board of review may be present and participate at such hearing. Hearings may be conducted by the board or by one or more of its members.

*a. Authority of presiding officer.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

*b. Representation.* Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or by a designated representative. A partnership, corporation, or association may be represented by any member, officer, director, or duly authorized agent.

*c. Participation in hearing.* The parties to the appeal have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review. Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

*d. Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

*e. Conduct of the hearing.* The presiding officer shall conduct the hearing in the following manner:

(1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

(2) The parties shall be given an opportunity to present opening statements;

(3) The parties shall present their cases in the sequence determined by the presiding officer;

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. Witnesses may be sequestered during the hearing. The presiding officer may limit questioning in a manner consistent with law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**115.8(7) Dismissal.** If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

**115.8(8) Hearing recordings.** All hearings shall be electronically recorded. Any party may request a copy of the hearing recording and pay a fee associated with preparing the copy. Any party may provide a certified court reporter at the party's own expense.

**115.8(9) Members participating.** Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

**115.8(10) Ex parte communications with board members.** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate. Ex parte communications between a person or party and any board members in connection with any issue of fact or law in the contested case proceeding is prohibited except as permitted by Iowa Code section 17A.17. All of the provisions of Iowa Code section 17A.17 apply to proceedings before the board.

**115.8(11) Disqualification of board member.** A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

*a.* A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:

(1) Has a personal bias or prejudice concerning a party or a representative of a party;

(2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;

(3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;

(4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;

(5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;

(6) Has a spouse or relative within the third degree of relationship who:

1. Is a party to the appeal, or an officer, director or trustee of a party;

2. Is a lawyer in the appeal;

3. Is known to have an interest that could be substantially affected by the outcome of the appeal;

or

4. Is likely to be a material witness in the appeal; or

(7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.

*b.* Motion for disqualification.

(1) If a party asserts disqualification on any appropriate ground, including those listed in paragraph 115.8(11)“*a*,” the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

(2) If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect.

*c.* The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.

*d.* Withdrawal. In a situation where a presiding officer or any other board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

[ARC 2108C, IAB 8/19/15, effective 9/23/15; ARC 2545C, IAB 5/25/16, effective 6/29/16; ARC 3430C, IAB 10/25/17, effective 11/29/17; Editorial change: IAC Supplement 11/2/22; ARC 6858C, IAB 2/8/23, effective 3/15/23]